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UNCLAS SECTION 01 OF 08 PRETORIA 000289

SIPDIS  
SENSITIVE

DEPT FOR AF/S, AF/RSA; G/TIP FOR STEPHANIE KRONENBURG;  
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ASEC, PREF, ELAB, KMCA  
SUBJECT: PRETORIA INPUTS TO THE 2010 TRAFFICKING IN PERSONS  
(TIP) REPORT -- PART 1 OF 3

REF: A. STATE 02094  
[1](#)B. PRETORIA 1551  
[1](#)C. PRETORIA 2016  
[1](#)D. PRETORIA 2229  
[1](#)E. PRETORIA 2567  
[1](#)F. PRETORIA 2671

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Summary  
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[1](#)1. Post hereby submits responses to the Department's action request (ref A) for the tenth annual Trafficking in Persons (TIP) Report, covering the period from mid-February 2009 through mid-February 2010. Following an overview of South Africa's counter-trafficking efforts, and of its unique capacity challenges as a 15-year-old emerging democracy, responses in paragraphs 7-15 correspond to reftel's paragraphs 25-35 of specific questions. Paragraphs 16-19 below then list sources, Post contributors, time spent, and TIP contact at post. End Summary.

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Overview: Major Milestones Ahead -- TIP Law, World Cup  
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[1](#)2. Per Post's reporting through the year (Refs B-F), the South African government (SAG) is committed to combating the scourge of human trafficking. Political will does exist at the national level, and the typically glacial pace of government progress has been helpfully prodded by advocacy from civil society groups and international media attention. The 2009-10 reporting period was dominated by preparations for two significant hurdles -- enactment of a comprehensive Trafficking Law, and hosting of the FIFA World Cup -- due to be passed in 2010.

[1](#)3. On the legislative front, the SAG's counter-trafficking Bill has been in a protracted gestation phase, which is at last due to yield a formal TIP Law in 2010. The legislation and its associated interagency procedures have been in the works for some years now, including via repeated rounds of

public consultation. (Note: South Africa's slow lawmaking process is aggravating to outside observers, but the TIP Bill's long development is common, even for high priority "fast track" initiatives. End Note.) By year-end 2009, the SAG's executive branch had completed its draft, for the Minister of Justice to submit to Parliament at its opening session in February 2010. With three parliamentary committees acting as midwives, the question is not whether the law will be born, but only how long and arduous will be the labor. Among our sources, predictions for the law's passage range from March to November, either of which may be correct. The law will establish mandates, provide budgets, and initiate coordination of public and private action to combat TIP. (Many TIP discussions are predicated on it: "Once the law is passed, we will be able to....")

¶4. The 2010 World Cup in South Africa continues to be an important catalyst for TIP awareness and prevention activity. The SAG has drafted a Child Protection Strategy at national level, and it tasked each province hosting a World Cup game to write a plan for child protection and TIP prevention. Qto write a plan for child protection and TIP prevention. These plans were successfully tested during the 2009 Confederations Cup (precursor to World Cup), when post was not aware of any cases of TIP linked to the games. The more nimble civil society sector has been energetic in its concern for children, who may be vulnerable while schools are closed during the games. An anti-TIP consortium of of NGOs in Western Cape province (ref C), the Nelson Mandela Children's Fund (ref F), local and global church networks, and countless other local organizations are mobilized around child protection. These independent initiatives lack a single

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point of national coordination, hence they may have both gaps and overlaps, but they illustrate how factors like the pending TIP Bill, long-running grass-roots advocacy, and a World Cup driven spike in media attention have created a "buzz" around TIP in 2009. That buzz has in turn put constructive pressure on the SAG to pass the TIP Bill, for which the SAG does have a sense of urgency.

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Context: Great Need, But Fledgling Capacity  
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¶5. Classed as a 'middle income' economy, South Africa is often mistaken for a uniformly first-world, developed nation, without a full appreciation of the magnitude of its challenges and constraints in combating crime and social ills. Income distribution is highly skewed, with a very small segment of concentrated affluence amid a wider population of which more than half live below the poverty line. Its very status as a world-class tourism destination, with extensive transport links serving as a regional hub, combine with its wide income disparities to create especially fertile ground for TIP.

¶6. As a 15-year-old democracy, the SAG is still in its infancy, struggling to extend governance and protections to the majority of its citizens who were woefully neglected under apartheid. Legislative frameworks on rights and justice are in the process of fundamental overhaul, yet the shortfall in implementation capacity is estimated on the order of several hundred thousand mid-level workers. The SAG particularly lacks the skilled workers it needs to implement programs, and government salaries are low. Members of Parliament have no professionally trained staff; SAG departments are massively overstretched; police are expanding but still strained; and social workers are in desperately short supply. A very dynamic civil society sector helps to bridge some of the gaps, creating a vibrant and vocal but often patchy advocacy community. It is in this context of transitional democracy -- wholly committed but nascent and still largely underdeveloped -- that South Africa's efforts should be judged.

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TIP Situation  
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17. (Responses to paragraph 25 of Ref A.)

-- A. Sources of information on TIP were dispersed, since many groups addressed the issue. With a range of SAG agencies, IOs, NGOs, faith based organizations (FBOs), and community groups (CBOs) confronting different aspects of the problem, there was no central repository of qualitative information and no source of statistical data. While a wide array of anti-TIP efforts were underway in South Africa, the majority of those were not publicized or published, and information had to be gathered primarily through in-person meetings. The counterparts interviewed by post for this year's TIP Report are listed in paragraph 16. Post believes these sources were reliable, in the sense of being truthful, but their information was likely to be incomplete, given the underground nature of TIP and the many diverse groups fighting it. Documentation of TIP will improve after this year with the pending passage of TIP legislation, generating formal requirements for parliamentary reporting and statutes for compiling crime statistics.

-- B. South Africa was a country of origin, transit, and destination for women, children, and men trafficked internally (domestically) and internationally across its borders. (The country had no ungoverned territory or civil war.) Domestically, victims were largely trafficked from poor rural areas to urban centers like Johannesburg, Cape

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Town, Durban, and Bloemfontein. For a detailed list of primary locations and a map of main domestic trafficking routes, see pages 32-33 of the IOM's October 2008 report, "No Experience Necessary: The Internal Trafficking of Persons in South Africa" of research funded by USAID (Ref C; <http://iom.org.za> under "publications"). These patterns remained valid in 2009.

Among international victims, countries of origin can be partly inferred from the 306 victims directly assisted by IOM from January 2004 to January 2010. These were a mix of persons from Asia and neighboring countries of Southern Africa -- most of them Thai (153), as well as Congolese (36), Zimbabwean (29), Mozambican (20), Indian (12), and Chinese (11). According to the NPA, Chinese traffickers made Johannesburg a regional hub for collecting victims from Lesotho, Mozambique, and Swaziland, for exploitation locally and in other cities. Trafficking into South Africa from neighboring Angola, Mozambique, Congo, and Zimbabwe was believed to be on the rise. From more distant countries, however, it may be falling: the flow of trafficked Thai women appeared to slow in 2009 (perhaps due to successful pressure by law enforcement, made aware of this segment in recent years), while the demand for Eastern European women for sex work in exclusive private men's clubs was now being met by willing prostitutes rather than TIP victims.

Women are trafficked out of South Africa mainly to Europe and the Far East (albeit in relatively small numbers compared to the internal trade), for commercial sexual exploitation at clubs in the U.K. or Ireland, or domestic work then followed by sexual exploitation. Nigerian syndicates, who have the strongest grip on TIP inside South Africa, have reportedly begun moving trafficked women to the U.S. as well, targeting African migrant clients there.

The IOM study catalogued five main purposes of internal TIP: commercial sexual exploitation (both male and female), domestic servitude (girls), agricultural labor (boys), street work (vending, begging, and crime), and a perversion of "muthi" (which broadly means traditional medicine, but in

this context organ removal for use in such medicine). Both internally and internationally, commercial sexual exploitation was the primary purpose, to which the sources and destinations described above refer. According to the South African Department of Labor (SADOL), ethnic Chinese (from PRC or ROC) laborers were trafficked to sweatshop factories in Chinese urban enclaves in South Africa. These operations were highly organized and mobile to evade labor inspectors, even moving in and out of neighboring Lesotho and Swaziland to avoid arrest. While SADOL acknowledged that Mozambican or Zimbabwean men and children were exploited by labor brokers in South Africa for farm work, SADOL characterized this as a localized abuse of migrants already seeking work in the area, rather than TIP per se. The South African Police Service (SAPS)' TIP officer also described exploitative farm labor in border areas as smuggling more than TIP.

There were no available estimates of the numbers of TIP victims in South Africa, but numbers were believed to be high. Patterns of TIP destinations and purposes in 2009 were consistent with those reported in prior years. New brothels have proliferated near football stadiums in advance of the 2010 FIFA World Cup. Many of these new venues have undertaken recruitment drives -- for willing sex workers and probably newly groomed TIP victims as well -- and were fully staffed during the peak year-end holiday season, ready to cater to visiting football fans.

-- C. Victims faced conditions of confinement, intimidation, and abuse. For example, in the domestic servitude TIP trade, the IOM study recounts that girls in the Western Cape were bused to big cities, then corralled into small holding rooms

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of 20-30 girls, and paraded before prospective employers until "purchased." Once brought to work in a private home, many were subject to abuse (including sexual) by employers, and too frightened or ashamed to escape. Those who fled could easily fall prey to sexual traffickers. On farms, laborers were often paid little or nothing to work long hours and live in substandard conditions. Across all categories of TIP, traffickers controlled victims through intimidation and threats, use of force, confiscation of identity documents to discourage escape, demands to pay job "debts," and even forced use of drugs and alcohol.

-- D. South Africans most at risk of becoming trafficking victims were mainly poor blacks, from rural areas suffering high rates of unemployment and from where wage earners had traditionally migrated to cities in search of work. With half the population below the poverty line, and roughly a third unemployed (spiking this year due to the economic crisis), many who were desperate for work would travel long distances to where the economy was more robust. Economic disparities among racial groups and between rural vs. urban communities created trafficking opportunities.

The AIDS epidemic in South Africa also increased mobility, and hence vulnerability, not just of young men but of women and children heads of household. NGOs such as Khulisa estimated that children made up 60 percent of TIP victims in South Africa, although kept on farms and in private homes these were harder for law enforcement to locate and rescue compared to the more easily identifiable foreign women in brothels. A growing population of orphans were vulnerable to predatory traffickers for exploitation in crime, labor, or the growing demand for younger virgins in a sex trade more fearful of HIV/AIDS. In a culture with some of the world's highest rates of rape and gender violence, victims fleeing forced marriages or abuse at home could fall prey to TIP.

-- E. Organized criminal groups including Nigerian, Chinese, Thai, Ukrainian, and Russian syndicates and local gangs facilitated trafficking into, through and within South Africa

for the purpose of commercial sexual exploitation. Some of these syndicates may even have spawned offshoot operations in neighboring countries. International mafias initially recruited victims of their own nationalities, but there was also secondary "swapping" of victims. Informed sources indicated that Nigerian groups also dominated domestic TIP for the sex trade. The IOM study documented very organized regional networks trading in teens and young women for domestic servitude, particularly in the Western Cape. Smaller, more amateur groups typically operate in other labor-related TIP such as farm work or street begging.

Trafficking victims were mostly lured by promises of lucrative (and legal) jobs enabling them to better their own lives and send money home to their families. Whereas typical Qlives and send money home to their families. Whereas typical victims used to be runaways who fell prey to city pimps, nowadays syndicates proactively sent recruiters to rural towns. Recruiters for the sex trade were just as likely to be women as men, and often trusted family members, acquaintances, or neighbors. Posing as employment agencies, traffickers for domestic labor used job ads in local newspapers to lure victims.

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SAG Anti-TIP Efforts  
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18. (Responses to paragraph 26 of Ref A.)

-- A. The SAG acknowledged the TIP problem and had drafted comprehensive legislation to combat it. In the meantime, it was using existing and interim legislation to arrest and punish perpetrators, commissioning training of officials to recognize and address TIP situations, and expanding shelters

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and services to attend to victims.

-- B. NPA/SOCA had the lead in coordinating SAG countertrafficking efforts, both within government and with external partners from civil society. NPA/SOCA chaired a Trafficking in Persons Inter-sectoral Task Team whose members included the Departments of Justice and Constitutional Development (DoJ), Home Affairs (DHA), Labor (SADOL), Social Development (DSD), as well as the Organized Crime Unit and Ports of Entry Division of the South African Police Service (SAPS), the IOM, the United Nations Office on Drugs and Crime (UNODC), and local NGO Molo Songololo. As only a two-person team, however, the NPA/SOCA's capacity for outreach and coordination was limited. Sources described South Africa's anti-TIP activity as mainly independent, operating-level 'silos' of action among many public and private actors. (Note: TIP responsibility may be elevated to a higher level within the SAG upon passage of the law, raising its profile and access to resources while likely improving coordination. This point is for G/TIP information only, not for publication. End Note.)

As in 2008, the Task Team's primary focus in 2009 was laying groundwork to implement the pending law -- promoting interagency dialogue and joint planning; formulating standards, protocols, and interagency operating procedures for the TIP law's implementation; and undertaking extensive trainings of TIP concepts, identification, and agency roles. NPA/SOCA also supervised contracts for a set of five EU-funded anti-TIP initiatives due to run through the end of 2010. These were: curriculum development (continuing work by IOM -- in draft, targeted for completion in August 2010); research into TIP trends and support to victims (to be managed by the Human Sciences Research Council, and parceled to experts in criminology, psycho-sociology, and law); awareness raising (given to the International Labor Organization's International Training Center -- which will compare "before" and "after" measures of TIP awareness, in conjunction with school training sessions in pilot sites

across five provinces); "coordination and cooperation" with other countries by the NPA; and monitoring and evaluation ('M&E').

-- C. The key hurdle to the SAG's anti-TIP efforts remained comprehensive anti-TIP legislation. At year-end 2009 the SAG's TIP Bill was fully drafted, reviewed by the Cabinet (FOUO please), and awaiting handover by the executive (Minister of Justice) to the legislative branch (Parliament).

The SALRC's first draft of the Bill had been released in mid-2008, for public and interagency consultations and suggested edits. Its revised version was submitted to the Minister in November 2008. Parliament was disrupted by national elections in April 2009, delaying a possible submission to lawmakers. In July 2009, the Deputy Justice Minister told visiting G/TIP Ambassador CdeBaca that the government had extended a second round of public commentary to the end of that month, in light of wide and strong interest in the TIP issue and an encouragingly high volume of public inputs. The DepMin assured CdeBaca that it was the SAG's intent to have the bill in place by 2010, although that goal was made more difficult by the abridged parliamentary calendar in 2009. Sources in the Department of Justice (FOUO please) told poloff in December that the Minister had shared the draft with the Cabinet, as a final step toward submission to Parliament.

(Note: although the Department guidance (ref A) excludes forward-looking reporting, the Bill passage is likely to come to a head around the time the Department's TIP Report goes to press. By all accounts, the Bill will be presented to Parliament in February 2010, but opinions vary on how long the Parliament could take to pass it. Parliament officially opens in mid-February, but its first week or two are given solely to budgetary matters. The Bill could then be

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submitted by the Justice Minister to his affiliated Justice Committee by the end of February. According to UNODC officer Johan Kruger, three separate parliamentary committees -- those of Justice, Safety and Security, and Social Development -- must debate the Bill. Kruger will brief MPs from these committees on TIP and the Bill, to secure their support and speed their deliberations. Emboffs will coordinate with Kruger and parliamentary contacts to attend briefings and otherwise lobby key committee members. According to Kruger, the parliamentary committees may opt to invite further public comment, introducing potentially long delays and even rewrites to the Bill -- hence this variable will be the key determinant of the Bill's progress. Once the committees approve the Bill, it is expected to be passed readily by the main chambers. DoJ sources forecast passage by March/April; Kruger himself thought June/July more likely; and IOM was most pessimistic, anticipating a vote in the Parliament's year-end session circa October/November. End Note.)

Costing of the Bill was a concern that could become a constraint at implementation. The NPA and SALRC both gave assurances that the Bill's costs had been fully forecast. SALRC said lessons had been learned from the Children's Act (which had been inadequately costed, with the result that it was stalled in implementation), and the TIP Bill would not suffer the same fate. ILO and IOM were both skeptical, however. ILO worried whether the SAG would have the capacity and funding to sustain the awareness work it had launched, and from which ILO would withdraw in February 2010, when there was no sign of budgets being allocated in the absence of a final TIP law. IOM said it had only been contacted by costing consultants late in 2009, when the Bill was already drafted, and they saw the effort as rushed and cursory.

Other important limitations included capacity of SAPS, NPA, and Social Development to pursue all cases and attend to all victims, given insufficient police and prosecutors, and chronic shortfalls among the ranks of social workers. At

SAPS and NPA the problem was less one of funding, and more one of these services struggling to build sufficient staff with adequate skills for their dramatically expanded responsibilities in the post-1994 aftermath of apartheid. At DSD, budgets had been cut in 2009, and social workers' salaries equivalent to US\$ 400 per month could not compete with the private sector.

Awareness of TIP-related law, ability to apply it in identifying cases, and confident knowledge in appropriate measures to take were also still lacking, hampering the responses of police and immigration officers, since only a minority had yet been exposed to counter-TIP training. Some police officers were said to receive bribes from crime syndicates, or failed to pursue criminals out of fear of reprisals, or preferred to deport victims as a shortcut compared to opening a TIP investigation, particularly given language barriers. There was no evidence of large-scale corruption or official collaboration with traffickers, but the large sums of money generated by the trade was believed to fund localized corruption.

-- D. The SAG did not yet have a systematic mechanism for monitoring and reporting the anti-trafficking efforts of its own agencies and external partners. There were plans to incorporate TIP tracking into a data base of justice and crime prevention called "e-justice." The latter would track investigations, prosecutions, and victims, across SAPS, NPA, DHA, SADOL, and DSD. In 2008, e-justice was expected to be two to three years in development. As of early 2010, NPA/SOCA contacts believed development was continuing, but they had not yet seen outputs.

-- E. The question of identity documents was a very timely one in South Africa in 2009. The Department of Home Affairs (DHA) had responsibility for documenting nationals (including

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birth / marriage / death certificates, identity cards, and passports) as well as for processing visas and permits for foreign migrants and asylum seekers. DHA has long been notoriously dysfunctional, plagued by both inefficiency and corruption. The problem of genuine South African passports fraudulently obtained by non-nationals has been so widespread that in 2009 the U.K. imposed a visa (with interview) requirement on South African travelers.

The new Home Affairs Minister appointed in 2009 candidly acknowledged the problem, and she undertook to root out corruption in her department and ensure document security. (In December 2009, for example, DHA border officials confiscated hundreds of SAG passports from travelers suspected of being non-nationals.) A key contributing factor to unreliability of SAG passports was late registration of births, common among black South Africans (including the Minister herself) who were neglected by the state under apartheid. Because it was common for nationals to obtain identity documents as adults, this loophole was used by aliens to bribe officials and buy nationality. As part of her overhaul, the Minister launched a mass campaign to register all South Africans (complete with biometric data) and to end late registration of births within the next two years.

-- F. The SAG was not able to gather or analyze data on law enforcement efforts related to human trafficking in any systematic fashion. As noted in item "D" above, electronic data bases were still under development to track TIP and other cases. Moreover, until the TIP Bill was enacted as law, statutory codes did not exist to differentiate cases of trafficking (which would be lumped together into statistics for all other rape, racketeering, forced labor, etc.). Even the NPA/SOCA officers tasked with leading the SAG on TIP nationally were unable to furnish a list of ongoing cases; post relied on media reports. Pending the law and national



data base, the only way to collect such data would be via manual compilation, i.e. through phone inquiries to each prosecuting unit around the country.

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Investigation and Prosecution  
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19. (Responses to paragraph 27 of Ref A.)

-- A. South Africa's Prevention and Combating of Trafficking in Persons Bill was drafted and awaiting a vote date by Parliament. (Cf. paragraph 8C.) The Bill was comprehensive and specifically targeted to TIP, for both sexual exploitation and labor, in both domestic and cross-border cases. (Note: full text of the bill, aka "Project 131," is at <http://salawreform.justice.gov.za/reports.htm>, the PDF report next to Project 131 -- Annexure D, pages 188-269.)

Pending the TIP Bill's passage, prosecutors continued to rely on elements of common law (e.g. rape, assault, kidnapping, and extortion) and acts against racketeering, sexual abuse, forced labor and child labor, and pornography. This body of legislation included the Prevention of Organized Crime Act 121 of 1998 (POCA); the Sexual Offences Act 23 of 1957, as amended in December 2007; the Basic Conditions of Employment Act 75 of 1997; the Children's Act 38 of 2005, as amended in November 2007; the Immigration Act 13 of 2002; the Films and Publications Act 65 of 1996; the Corruption Act 94 of 1992; the Extradition Act 67 of 1962; and the International Cooperation in Criminal Matters Act 75 of 1996. (Note: these are unchanged since previous years' reports, hence they are not reproduced here. End Note.)

Given the strong ties of TIP to criminal networks, the Prevention of Organized Crime Act 121 of 1998 (POCA) was the law most used to date to punish traffickers, usually those

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related to the sex trade. SAPS noted that POCA also had the most extensive list of charges, hence highest probability that some would "stick" and yield convictions. The new Sexual Offences Act (SOA) now criminalized trafficking for sexual exploitation and did not allow victims to be prosecuted for related offenses like immigration laws or prostitution. (Note: full text of the latter provisions is at [http://www.info.gov.za/gazette/bills/2003/b50\\_b-03.pdf](http://www.info.gov.za/gazette/bills/2003/b50_b-03.pdf), pages 40-41, sections 70-71(1)-71(2).)

The Children's Act of 2005 prohibited "the recruitment, sale, supply, transportation, transportation, harboring or receipt of children, within or across the borders of the Republic." The law also prohibited the commercial sexual exploitation of children, sexual intercourse with children under 16, or permitting a female under 16 to stay in a brothel for the purpose of prostitution. The Children's Amendment Act of 2007, signed into law in March 2008, created an advanced regulatory framework for prevention and prosecution of child labor, explicitly outlaws child trafficking. Section 141 of the Act defined and criminalized the worst forms of child labor, including TIP, in accordance with ILO Convention 182. This Act further included a requirement for planning at a national and provincial level along with an effective roll out of services. Implementation of the Children's Act was reportedly only partial in 2009, with important elements stalled or stillborn, since key departments like DSD were unable to fulfill them due to capacity and/or cost constraints.

-- B. The maximum penalty for violations of the Sexual Offences or Children's Acts was 20 years in prison. In the past, application of common law had obtained sentences nearly that long, as in the case of trafficker Amien Andrews, sentenced in 1996 and still serving 17 years for charges including kidnapping, indecent assault, and rape.



-- C. Labor related TIP offenses were punishable under a variety of existing laws. The Basic Conditions of Employment Act removed cases of forced and child labor from the Labor Court and assigned them to the Criminal Court, where sentencing was based on precedent and case law. Post was not aware of any case prosecuted to a close to set a precedent.

-- D. Penalties for rape and sexual assault were difficult to estimate. The Sexual Offences Act makes mention of penalties from three to seven years, depending on offenses and their severity, leaving the sentence to the discretion of the court. Penalties for these crimes against children were markedly more severe, up to a maximum life imprisonment, with even first time offenders receiving on the order of 15 or more years.

-- E. After a banner year in 2008, in which at least 16 traffickers were arrested and charged, post uncovered fewer cases in 2009. This may be due to police focus on Confederations Cup and World Cup security, or law enforcement seeing through the caseload of 2008, or simply lack of media Qseeing through the caseload of 2008, or simply lack of media coverage of specific cases.

In March, police arrested several several wealthy Durban businessmen linked to a child prostitution ring. The case was ongoing at year's end, with reportedly more arrests pending. In October, police rescued from a Durban brothel a 13-year-old girl they believed had been trafficked from a neighboring province; the case was under investigation at year end. In November, a Thai woman (married to a South African) Giang Brooderyk was arrested for luring Thai women on promises of massage jobs, then forcing them to work as prostitutes. The trial was postponed to February to enable investigation.

(Text of paragraph 9 continues in the "Part 2" cable.)  
GIPS